

## DEPARTMENT OF INSURANCE

December 31, 2013

Bulletin 204

**Guaranteed Availability of Issue Exceptions**

This bulletin is directed to all insurers writing accident and sickness insurance policies, as defined by [IC 27-8-28-9](#), in the nongrandfathered individual and small group market; health maintenance organizations, as defined by [IC 27-13-1-19](#); risk retention groups, as defined by [IC 27-7-10-11](#); reciprocals, as provided by [IC 27-6-6-1](#); rating organizations, associations, and all other entities issuing accident and health products subject to the Patient Protection and Affordable Care Act, Pub. L. 111-148, as amended by Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152 (ACA).

Pursuant to 45 CFR 147.104(a), a health insurance issuer (hereinafter, "health insurer") must issue coverage in a individual or group market to any individual or employer who applies for coverage. Health insurers may limit coverage to service areas for the network plan. There are two exceptions where health insurers may deny coverage. Under 45 CFR 147.104(c)(1)(ii), a health insurer may deny coverage if it demonstrates to the Department that it lacks adequate network capacity (the "Network Exception"); and under 45 CFR 147.104(d)(1), a health insurer may deny coverage if it demonstrates to the Department that it lacks adequate financial capacity (the "Financial Exception"). The purpose of this bulletin is to inform health insurers how to seek a Network Exception or Financial Exception.

**Network Exception**

The Network Exception allows health insurers that offer health insurance coverage through a network plan to deny coverage within a particular service area. The health insurer must demonstrate to the Department that it: (1) does not have the capacity to provide services adequately to any additional employers or individuals because of existing coverage obligations; and (2) is limiting service areas uniformly without "regard to the claims experience of those individuals, employers and their employees (and their dependents) or any health status-related factor relating to such individuals, employees, and dependents."

Once a health insurer qualifies for a Network Exception, it may then deny coverage to an employer or individual. Denying coverage restricts a health insurer from offering any coverage in the service area for at least 180 days. However, a health insurer that has received a Network Exception is not prevented from renewing coverage already in force and is not relieved of any responsibility to renew that coverage.

A health insurer requesting a Network Exception must properly submit a Request for Network Capacity Exception (Network Exception Request) and provide:

- Detailed reasons for seeking the exception, including the specific reasons why the health insurer will not have the capacity to deliver services adequately to enrollees of any additional groups or any additional individuals because of its obligations to existing group contract holders and enrollees;
- Documentation or other evidence to support the reasons for why the network capacity is inadequate;
- An attestation by an officer that all information is correct and that the health insurer is applying the denials uniformly to all individuals without regard to the claims experience of those individuals, or any health status-related factor relating to such individuals; and
- An attestation by an officer of lack of capacity.

The Network Exception Request and all accompanying documentation must be submitted to [compliance@idoi.in.gov](mailto:compliance@idoi.in.gov) at least 60 days prior to the date the health insurer intends to begin denying coverage. If sixty days notice is not feasible, the insurer should specifically state why in its Network Exception Request.

**Financial Exception**

The Financial Exception allows a health insurer to deny coverage within the state due to the insurer's financial hardship. The health insurer must demonstrate to the Department that it: (1) does not have the financial reserves necessary to offer additional coverage; and (2) is limiting service areas uniformly without "regard to the claims experience of those individuals, employers and their employees (and their dependents) or any health status-related factor relating to such individuals, employees, and dependents."

Once a health insurer qualifies for a Financial Exception, it may then deny coverage to an employer or individual. Denying coverage restricts a health insurer from offering any coverage in the service area until it can demonstrate it has sufficient financial reserves to underwrite additional coverage or a period of 180 days, whichever is longer. However, a health insurer that has received a Financial Exception is not prevented from renewing coverage already in force and is not relieved of any responsibility to renew that coverage.

A health insurer requesting a Financial Exception must properly submit a Request for Financial Exception (Financial Exception Request) and provide:

- Detailed reasons for seeking the exception, including the specific reasons why the health insurer "does not have the financial reserves necessary to offer additional coverage";
- Documentation or other evidence to support the reasons for why the financial capacity is inadequate;
- An attestation by the Chief Financial Officer that all information is correct and that the health insurer is applying the denials uniformly to all individuals without regard to the claims experience of those individuals, or any health status-related factor relating to such individuals; and
- An actuarial certification of lack of financial capacity.

The Financial Exception Request and all accompanying documentation must be submitted to Cindy Donovan, Chief Financial Examiner, at [cdonovan@idoi.in.gov](mailto:cdonovan@idoi.in.gov), with a copy to [compliance@idoi.in.gov](mailto:compliance@idoi.in.gov) at least 60 days prior to the date the health insurer intends to begin denying coverage. If 60 days notice is not feasible, the health insurer should specifically state why in its Financial Exception Request.

Questions regarding this bulletin should be directed to Tina Korty, General Counsel, at (317) 232-2417 or [tkorty@idoi.in.gov](mailto:tkorty@idoi.in.gov) or [compliance@idoi.in.gov](mailto:compliance@idoi.in.gov).

INDIANA DEPARTMENT OF INSURANCE  
Stephen W. Robertson  
Insurance Commissioner

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